IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9530 of 2000 (O&M)
Date of Decision: March 02, 2015

Parmod Dada and others .....Petitioners

Versus

State of Punjab and others ....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Shri J.R. Mittal, Senior Advocate, with
Shri Kashish Gupta, Advocate, for the petitioners.

Shri Inder Pal Goyat, Additional AG, Punjab.

Shri Amit Jain, Advocate, for respondent Nos. 4 to 7.

i) Whether Reporters of local papers may be allowed to see the judgment?
ii) To be referred to the Reporters or not?
iii) Whether the judgment should be reported in the Digest?

Hemant Gupta, J.

The petitioners have invoked the writ jurisdiction of this Court for declaring that the land measuring 3 kanal 18 marla is exempted from the Town Planning Scheme and for quashing of the orders dated 19.11.1999 (Annexure P.18) and the order dated 11.04.1997 (Annexure P.19).

The petitioners claim to have purchased the land measuring 27 kanal 4 marla i.e. 11000 square yards in the year 1957. The petitioners framed a scheme known as Dada Colony for the development of the said area with the sanction of the Municipal Council. Out of the said land, as per the petitioners, land measuring 3120 square yards was already built up area, land measuring 1225

square yards was reserved for roads and the drainage and the remaining land measuring 6655 square yards was the plot-able area. The petitioners sold the land measuring 306.5 marlas to 20 different persons between 1960 and 1991 i.e. 20 marlas each on 4.3.1960 and 12 marlas on 12.4.1967, thus, leaving the area of 3 kanal 18 marla of land in the ownership and possession of the petitioners.

On 12.02.1962, the Municipal Council declared un-built area covering the area of the above mentioned Dada Colony. The petitioners submitted their objections on 20.10.1964. Such objections of the petitioners were accepted on 12.11.1964, but on 28.11.1964, the resolution accepting the objections was withdrawn without any notice to the petitioners. The stand of the petitioners is that the agenda of the meeting on 28.11.1964 did not pertain to the Resolution No. 225, whereby the objections filed by the petitioners were accepted. The Municipal Council is said to have again invited objections vide public notice. The petitioners submitted their objections on 26.04.1966. Such objections were rejected by the Divisional Town Planner on 21.07.1966, who was not competent to decide the same. The Town Planning Scheme as proposed on 12.02.1962 was approved by the State Government on 06.12.1967 (Annexure P.10). Even though the scheme was not sanctioned, but no action was even taken for execution of the scheme. Therefore, the land of the petitioners is exempted from the Town Planning Scheme.

It was in pursuance of the news published in the newspapers on 24.06.1993 to the effect that the remaining plot of the petitioners was reserved for the park in the impugned scheme, the petitioners submitted another representation on 22.07.1993, which was rejected by the Municipal Council on 06.12.1994. Another representation was submitted on which report of Chief Town Planner was called. The report dated 10.12.1996 has been appended with the writ petition as

Annexure P.14. On such report, the representation of the petitioners (Annexure P.13) was accepted and a notification dated 14.01.1997 amending the Town Planning Scheme was published. The petitioners submitted a representation under Section 237 of the Punjab Municipal Act, 1911 (for short `the Act') for implementation of the order dated 14.01.1997, but the said notification amending the scheme was revoked on 11.04.1997. Subsequently, the representation of the petitioners was rejected on 19.11.1999, which is subject matter of challenge in the present writ petition.

The challenge in the present writ petition to the rejection of the representation on the ground that the land of the petitioners was exempted from operation of the Town Planning Scheme when the Municipal Council passed a resolution on 12.11.1964. Thereafter, such resolution has been withdrawn without notice to the petitioners and thus, such withdrawal is ineffective qua the rights of the petitioners. The Town Planning Scheme prepared in the year 1962, has not been implemented for more than 35 years and therefore, such scheme is deemed to have lapsed. Since the Municipal Council has sanctioned the Scheme of development of the land by the petitioners, therefore, the Town Planning Scheme for such land could not be prepared for a built up area in terms of Section 192 of the Act. For a built up area only a building scheme could be framed which also could not have been prepared as the Municipal Council has sanctioned the lay out plan submitted by the petitioners for development of the land.

The land of the petitioners could not be transferred to the Municipal Council without payment of the compensation more so when the Scheme was of the built up area in view of the judgment of the Hon'ble Supreme Court reported as Yogendra Pal v. Municipality

of Bathinda, AIR 1994 SC 2550, which has struck down Clause (c) of Section 192(1) of the Act.

On other hand, the stand of the Municipal Council, is that petitioner No.1 moved a representation under Section 237 of the Act, before the Principal Secretary, Government of Punjab. The petitioners were directed to file objections within 15 days vide an order dated 20.01.1998. Such objections of the petitioners (Annexure R.2/3) were disposed of by the Administrator, vide order dated 5.3.1998, Annexure R.2/4. Thus, it cannot be said that the petitioners were not given any opportunity of being heard. It is also pointed out that the Town Planning Scheme under Section 192 of the Act, was framed and the area was declared as un-built area vide resolution dated 12.2.1962, which was confirmed by the State Government on 6.12.1967. It is denied that the Council has illegally declared un-built area. The Municipal Council has invited objections regarding the framing of the Town Planning Scheme under Section 192 of the Act. The petitioners did file objections and that the objections were dealt with after providing due opportunity to all the owners of the properties whose land falls in the Town Planning Scheme, including Shri Pritpal Singh. Resolution No. 225 dated 12.11.1964 was passed to save the land of the Pritpal Singh and other landowners but the resolution was withdrawn on 28.11.1964. It is pointed out that personal hearing and opportunity was given to Shri Satpal Dada before finalization of the scheme.

In the written statement filed on behalf of the State, it was pointed out that the Town Planning Scheme Area No.1 was approved in the year 1964 and the particular numbers of the land in question were earmarked as green area park. This area was left by the owners for open space. Therefore, the open space in terms of the lay out

Scheme stands vested with the Municipal Council. Such area is being developed and managed by the Municipal Council since 1964.

We have heard learned counsel for the parties and find no merit in the present petition. Before examining the respective contentions of the parties, it is necessary to extract certain provisions of the Act, for ready reference, as bellow:-

> "**Section 3(18)(a)** "built area" is that portion of a municipality of which the greater part has been developed as a business or residential area.
> (b) "unbuilt area" is an area within the municipal limits which is declared to be such at a special meeting of the committee by a resolution confirmed by the State Government or which is notified as such by the State Government.
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> 189.- **Prohibition of building without sanction.** – (1) No person shall erect or re-erect or commence to erect or re-erect building without the sanction of the Committee.
> (2) Notice of building – Every person who intends to erect or re-erect any building shall give notice in writing to the committee of such intention.
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> 192. **Building Scheme:** - (1) The committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely: -
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> (a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put;
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> (b) the prescription of a building line on either side or both sides of any street existing or proposed; and

(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed thirty-five per cent and the amount transferred without payment shall not exceed twenty-five per cent, of any one owner's land within such unbuilt area.

(2) When a scheme has been drawn up under the provisions of sub-section (1) the committee shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

(3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date estimated under the provisions of sub-section (2) and may modify and scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Deputy Commissioner who may, if he thinks fit, return it to the committee for reconsideration and resubmission by a specified date; and the Deputy Commissioner shall submit the plans as forwarded or as resubmitted, as the case may be, with his opinion to the State Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and resubmission by a specified date.

(4) If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to resubmit a scheme by a specified date, when required to do so under sub-section (3) or resubmits a scheme which is not approved by the State Government, the Deputy Commissioner may draw up a scheme of which public notice shall be given by notification and by publication within the municipality together with an intimation of the date by which any person may submit in writing to the Deputy Commissioner any objection or suggestion which he may wish to make and the Deputy

> Commissioner shall forward with his opinion any such objection or suggestion to the State Government and the State Government may sanction such scheme as originally notified or modified in consequence of any such objection or suggestion, as the State Government may think fit; and the cost of such scheme or such portion of the cost as the State Government may deem fit shall be defrayed from the municipal fund.
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> (5) When sanctioning a scheme the State Government may impose conditions for the submission of periodical reports on the progress of the scheme to the Deputy Commissioner or to the State Government, and for the inspection and supervision of the scheme by the State Government."

The built area has been defined under Section 3(18)(a) of the Act to mean that portion of a Municipality of which greater part has been developed as a business or residential area whereas the unbuilt is an area within the Municipal limits, which is declared to be such at a special meeting of the Committee. We find that out of 11000 square yards of land purchased by the petitioners in the year 1957, the petitioners have sold only 20 marla of land each to Giani Teja Singh and Surinder Singh Bedi on 4.03.1960 prior to the declaration of the area as that of unbuilt area. Therefore, the greater part of the total land measuring 27 kanal 4 marla was not developed or used as a residential area, when the municipal council declared the area in question as unbuilt area. On 12.11.1964, the Municipality passed a Resolution declaring the area in question as an unbuilt area, but the Town Planner communicated to the Municipal Council of the incorrect representations, which led to the withdrawal of such resolution on 28.4.1964. Later, the state Government approved the resolution of the Municipal Committee on 6.12.1967 (Annexure P.10), which reads as under:-

> "In pursuance of the provisions of sub-section (3) of Section 192 of the Punjab Municipal Act, 1911, the

> Governor of Punjab is pleased to accord sanction to the Town Planning Scheme approved and submitted by the Municipal Committee, Kapurthala, by virtue of resolution No. 249 dated 27.8.66, for area No.1 bounded by Mall Road, Katchery Chowk to Bus Stand Road from Sainik School and Shalimar Garden Road (Jullundur Road), Kapurthala, the boundaries of which are more clearly shown in Drawing Plan No. DTP-J/54/65."

Before the approval of State Government of the unbuilt area, there was only one sale of 12 marlas of land in favour of Tarlok Singh on 12.04.1967 apart from two other sale deeds of 20 marlas each on 4.3.1960. Such sale deeds find mention in para No.3 of the writ petition itself. Even after the sales were effected in the years 1960 and/or 1967, it cannot be made out that the land was used as a residential area. In any case, the major portion of the land was not even sold. The approval of the lay out plan prepared by the petitioners in the year 1960 will not make the area in question as a built up area as the consideration is the greater part of a portion of the Municipality being "used" for residential purposes. The unbuilt area is declared to provide regulated and controlled construction. Therefore, mere fact that the lay out plan was sanctioned in the year 1960, the area will not cease to be unbuilt area. The resolution dated 12.11.1964 accepting the objections was withdrawn within 16 days on 28.11.1964. The Town Planner, vide communication dated 13.11.1964 (Annexure P.6), sent communication to the President, Municipal Committee, pointing out that the basis of resolution is not justified because the scheme was framed and re-framed under the suggestions of the Deputy Commissioner, the then Administrator of the Municipality. The Municipality has gone a long way in respect of the basic fact that some of the buildings were unauthorized and the plots have been sold after the area was declared as un-built area by

the Municipality. It was communicated that there was no purpose of enforcing the scheme in the adjoining area when slums are allowed to grow in its immediate vicinity without providing any essential and basic amenities. The Town Planner has communicated as under:-

> "4. Therefore, at this stage, when public hearing had been already made by the Administrator M.C. Kapurthala in presence of the undersigned during his visit to that place on 19.8.1963, and a decision had been taken to enforce the T.P. Scheme with proper accommodation of every unauthorized building, the only proper thing for the Municipal Committee was to publish the revised scheme and consider the pertinent objections as per Section 192 of the Punjab Municipal Act, and then send the modified scheme to the Government. This point had been fully explained in this office Memo No.598-DTP(J)/TPK-1 dated 6.4.64 to the address of the Secretary, Municipal Committee.
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> 5. Further, you should also appreciate that in case such a precedence is established to accommodate unauthorized constructions & sub division of land into plots in a haphazard manner without enforcing the layout and metalling of roads, set back from the road, provision of essential amenities etc. It will become very difficult for the Municipal Committee in later year to push through any other scheme, as such objections can be always expected from the vacated ..... in other areas also. Moreover, if this resolution is not withdrawn, the Committee will have to restart the processing of the scheme right from the beginning i.e. declaration of area as unbuilt, its subsequent confirmation by the Government framing of T.P. Scheme, publication of the scheme, inviting objections and then forwarding them to the Government for sanction, and in this way, it will take many more years for the finalization of the T.P. Scheme, as already advised earlier.
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> 6. Under the circumstance, you are requested to kindly get the resolution withdrawn by the Municipal Committee and enforce the T.P. Scheme, as already advised earlier."

It is thereafter, the Municipality withdrew the resolution dated 12.11.1964 on 28.11.1964.

The argument that the petitioners were not heard before withdrawal of the resolution on 12.11.1964 is not meritorious. The Municipality passed the resolution on the ground that Dada Colony carved out by the petitioners was approved on 7.9.1960 and the area now is completely constructed. The very basis of the resolution is incorrect in as much as only 2 plots of 1 kanal each (20 marlas) were sold in the year 1960. The substantial portion i.e. over 25 kanals was the unsold land. In the representation dated 20.10.1964 (Annexure P.3), the stand of the petitioners was that half the property is constructed, whereas the resolution was that area was completely constructed. Even as per the representation submitted by the petitioners, the construction of half of the portion would still be an unbuilt as the built area is the greater portion, as being used for the residential purposes.

Still further, the petitioners cannot be permitted to dispute the withdrawal of the resolution dated 12.11.1964 on 28.11.1964 in the present writ petition in as much as after the said resolution, a public notice (Annexure P.7) was given to the general public, to submit their objections/suggestions by 30.4.1966. The petitioners submitted their objections on 26.4.1966, Annexure P.8. Thereafter, such objections were considered in terms of Section 192(2) of the Act, before approving the Town Planning Scheme on 6.12.1967 (Annexure P.10) as reproduced above. Therefore, the resolution passed on 12.11.1964 does not create any right nor the withdrawal thereafter affected any right of the petitioners as the Town Planning Scheme was to be approved by the State Government in terms of Section 192(2) of the Act after considering the objections of the landowners including that of the petitioners.

Even though the scheme was approved in the year 1967, but the Municipality again passed a resolution on 6.12.1994 to take possession from the persons, who are in possession of the park on the basis of Resolution No. 225 dated 12.11.1964 which was withdrawn on 28.11.1964. The said resolution would not confer any right in favour of the petitioners as such resolution was withdrawn on 28.11.1964 and thereafter, the Town Planning Scheme was approved on 6.12.1967. It appears that somebody in the Municipality managed to seek a resolution without disclosing that the resolution dated 12.11.1964 was withdrawn soon thereafter.

The subsequent notification of the State Government to exclude the land of the petitioners out of the Town Planning Scheme on 14.1.1997 (Annexure P.15) was withdrawn on 11.04.1997. The said notification has been appended as Annexure P.19. Thereafter, objections raised by the petitioners were again considered (Annexure P.17) and declined by the Principal Secretary to the Government of Punjab, vide order Annexure P.18, wherein it was observed to the following effect:-

> "5. I have duly considered the matter from all angles. Admittedly, T.P. Scheme, which included the area of `Dada Colony' also, stood formally and finally notified on 6.11.1967. With the notification, the land in question had legally become the property of the Municipal Council, Kapurthala. Even if the possession had remained for long with the petitioners that would not alter the legal position under which its ownership had passed on to the Municipality. It was thus too late in the day on the part of the petitioners to move for any change in the scheme of things which had since acquired finality. Viewed in this context, the order dated 14.01.1997 patently suffered from material irregularity and impropriety. As soon as this came to the notice of the Government, the order was withdrawn vide Notification dated 11.04.1997. There was no order dated 14.01.1997 on the date the present petition was

> moved. Hence this petition has to be considered as incompetent and misconceived. Accordingly, the same is hereby filed."

In view thereof we find that once the area in question was unbuilt and the Town Planning Scheme of such unbuilt area was prepared in the year 1962 and approved by the State Government, the petitioners could not file subsequent repeated representations for excluding their part of the land from the Town Planning Scheme only because of their clout over the authorities. If aggrieved, the petitioners should have taken recourse to law after the notification issued in respect of the Town Planning Scheme, approved in the year 1967. The subsequent attempt to exclude the land of the petitioners vide notification dated 14.1.1997 was rectified on 11.4.1997.

Still later, another representation submitted by the petitioners was rejected on 19.11.1999. The desperate attempts of the petitioners to get their land excluded from the Town Planning Scheme was not challenged for almost 25 years when from1967. Therefore, the claim of the petitioners for excluding their land from the Town Planning Scheme does not merit acceptance.

The petitioners have strongly relied upon the judgment of the Hon'ble Supreme Court reported as Yogendra Pal's case (supra), wherein Section 192(1)(c) of the Act has been struck down being violative of Article 14 of the Constitution. It was found that it will create totally chaos and an manageable situation about the Municipal Council, if the provisions of the Act were declared valid with retrospective effect. Therefore, it was held that the provisions of the Act would be applicable prospectively. It was held as under:-

> "13. As held above, the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and of Section 203(1)(c) of the Haryana Municipal Act, 1973 are violative of Article 14 of the Constitution. Hence the acquisitions of the appellants' land

> under the respective provisions were bad in law. The question still remains as to what relief the appellants can be granted. It is now well-settled by the decisions of this Court beginning with I.C. Golak Nath v. State of Punjab, AIR 1967 SC 1643, that the Court can mould the relief to meet the exigencies of the circumstances and also make the law laid down by it prospective in operation. We are informed that till date the Municipal Committees in both Punjab and Haryana States have similarly acquired lands for their respective town planning schemes and in many cases the schemes have also been completed. It is only some of the landowners who had approached the courts and the decisions of the courts have become final in many of those cases. It would not, therefore, be in the public interest to unsettle the settled state of affairs. It would create total chaos and an unmanageable situation for the Municipal Committees if the said provisions of the respective statutes and the land acquisitions made thereunder are declared void with retrospective effect. We, therefore, propose to declare that the provisions concerned of the two enactments would be void from the date of this decision."

The argument of the petitioners that the scheme was not completed and therefore, the judgment would be applicable to the scheme sanctioned, is not tenable. The area in question measuring 3 kanal 18 marla was left for park in the Town Planning Scheme. It is being used as park which is evident from the reply submitted by the private respondents along with the photographs of the site in question. Therefore, the scheme stands completed in respect of the land in question. We may also notice that the implementation of the scheme is a continuous process. If the Town Planning Scheme has been prepared and the possession is taken in terms of Section 192(1)(c) of the Act, the scheme is completed. The development on such land now in possession of the Municipality may take some time, but that would not render the scheme as incomplete. Since the approval of the State Government granted in the year 1967 was not disputed for more than 25 years, when the petitioners again got a

notification issued on 14.1.1997, it cannot be said that the Scheme was not completed. Therefore, the land in question is being used in accordance with the purpose of the Scheme for the last 50 years now. In view of the said position in Yogendra Pal's case (supra), the Scheme so notified cannot be permitted to be disputed on the basis of the aforesaid judgment.

Reliance of the petitioners on the Division Bench judgment of this Court reported as Niranjal Lal v. Municipality, Bathinda, 1986(1) Punjab Legal Reports and Statutes 406, is not tenable. The land in question was declared unbuilt on 12.2.1962 i.e. before the preparation of the scheme. Therefore, the declaration of the unbuilt area and preparation of the Scheme is in accordance with the judgment of the Division Bench.

In Rajinder Garg v. Municipal Committee, Patiala, 1989 PLJ 56, the challenge was to the withdrawal of the sanction of the building plans. The said judgment is in no way applicable to the argument raised by the learned counsel for the petitioners as it is not case of the withdrawal of the sanction of the building plans, but only a resolution was withdrawn that too within 16 days. Thereafter, the objections filed by the petitioners were considered in accordance with the statute such as Section 192(2) of the Act.

Reference to the Indian Oil Corporation v. The Municipality Thanesar, 1989(5) Punjab Legal Reports and Statutes 491, is again not tenable for the reason that the Municipality of Thanesar had declared area as an unbuilt area though the substantial area was built. The facts of the aforesaid case have no parity with the facts of the present case.

Learned counsel for the petitioners has relied upon another order dated 4.8.2005 passed by a Division Bench of this Court in LPA No. 172 of 2004 – Municipal Corporation Bathinda vs. Kishore Chand.

In the aforesaid case, the question as to whether the land has been utilized prior to the cut off date in Yogendra's case (supra), was left to be decided by the Civil Court for proper determination. But in the present case, it has been found that in terms of the discussion above, the land in question stands utilized for the purpose of development of the park in the year 1964.

In Rajiv Sarin and another v. State of Uttarakhand and others, (2011)8 SCC 708, the issue in question was acquisition of land without payment of compensation. However, the said judgment again does not provide any assistance to the petitioners for the reason that in Yogendra' Pals case (supra), the provisions were declared ultra-vires.

In view of the above, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(Hemant Gupta)
Judge

(Hari Pal Verma)
Judge

March 02, 2015
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